referred this morning are very relevant and could suitably be mentioned in the lower court.

In all the circumstances then I would dismiss the appeal. I would dismiss the cross-appeal and would make no order as to costs.

Good J.A. and **Azmi J.** concurred.

Appeal and cross-appeal dismissed.

Solicitors: *Dharmananda & Co.; F. C. Arulanandom & Co.*

ANG CHIN SANG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J. (Singapore)) January 28, 1968]

[Singapore — Magistrate's Appeal No. 216 of 1967]

Interpretation — Conflicting statutory provisions — Penal provision — Legislative intent — Fair construction according to — Preamble to Act.

Criminal Law and Procedure — Caning — Young person under age of sixteen — Children and Young Persons Ordinance (Cap. 128), s. 55(3) — Criminal Procedure Code (Cap. 132), s. 274 — Punishment for Vandalism Act, 1966, s. 3.

Section 3 of the Punishment for Vandalism Act, 1966, provides "Notwithstanding the provisions of any other written law, any person who commits an act of vandalism ... shall be guilty of an offence under this Act and shall be liable on conviction to a fine ... or to imprisonment ... and shall also, subject to the provisions of section 274 of the Criminal Procedure Code, be punished with caning with not less than three strokes and not more than eight strokes."

Section 55(3) of the Children and Young Persons Ordinance (Cap. 128) provides — "Notwithstanding the provisions of any other written law no child or young person shall be sentenced by any court other than the High Court to corporal punishment." "Young person" for the purpose of section 55 means a person who is under the age of sixteen years.

Section 274 of the Criminal Procedure Code provides that females, males sentenced to death, and males whom the court considers to be more than fifty years of age shall not be punishable with caning.

The appellant, a boy under sixteen years of ago, was convicted by a magistrate's court for an offence punishable under section 3 of the Punishment for Vandalism Act, 1966 and was sentenced to three months' imprisonment and three strokes of the cane. He appealed on the ground that the magistrate's court had no power to impose the sentence of caning in view of section 55(3) of the Children and Young Persons Ordinance (Cap. 128).

Held, dismissing the appeal: (1) section 274 of the Criminal Procedure Code (Cap. 132) is a clear enactment of general application so that in respect of the three categories of persons mentioned therein no court whatsoever can sentence any of them to caning. Section 55(3) of the Children and Young Persons Ordinance (Cap. 128), however, is not of the same general application in that persons under the age of sixteen years can be sentenced to corporal punishment by the High Court;

(2) penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment. The legislative intent of the Punishment for Vandalism Act, 1966, is clear from the preamble which states that it is "An act to provide for exemplary punishment for acts of vandalism." The legislature by its express reference to section 274 of the Criminal Procedure Code (Cap. 132) intended to embrace all persons except the three categories specified therein, within the latter part of section 3, i.e. the punishment of caning. Therefore, the sentence of caning imposed was valid.

MAGISTRATE'S CRIMINAL APPEAL.

T. T. Rajah for the appellant.

Toh Weng Cheong (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: This is an appeal against a sentence of caning imposed by a magistrate's court. The appellant was convicted of an offence punishable under section 3 of the Punishment for Vandalism Act, 1966 and was sentenced to three months' imprisonment and three strokes of the cane.

He now appeals against the sentence of caning on the ground that the sentence of caning by the magistrate's court is *ultra vires* the provisions of section 55(3) of the Children and Young Persons Ordinance (Cap. 128) as the appellant was under the age of 16 years at all material times.

It is contended that in so far as a person who is under the age of sixteen is concerned and who has committed an offence under section 3 of the Punishment for Vandalism Act 1966 the only court that can sentence him to caning under the mandatory provisions of that section is the High Court because of the provisions to section 55(3) of the Children and Young Persons Ordinance (Cap. 128).

That that is the correct contention is because, it is submitted, section 55(3) is a provision of law of general application in that the legislature has thought fit to limit the power to sentence a child or young person i.e. a person under the age of sixteen, to suffer corporal punishment to the High Court only and not to other courts.

The determination of the point raised in this appeal requires the consideration of the provisions of three sections of three Acts of the legislature namely, section 3 of the Punishment for Vandalism Act 1966, section 55(3) of the Children and Young Persons Ordinance (Cap. 128) and section 274 of the Criminal Procedure Code (Cap. 132). It is to be noted that the 1966 Act is the latest act promulgated by the legislature in point of time.

The material provisions of section 3 of the Punishment for Vandalism Act 1966 are as follows: —

"3. Notwithstanding the provisions of any other written law, any person who commits any act of vandalism or attempts to do any such act or causes any such act to be done shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three years, and shall also, subject to the provisions of section 274 of the Criminal Procedure Code, be punished with caning with not less than three strokes and not more than eight strokes."

Section 55(3) of the Children and Young Persons Ordinance provides that: —

"Notwithstanding the provisions of any other written law no child or young person shall be sentenced by any court other than the High Court to corporal punishment."

"Young person" for the purpose of section 55 is defined to mean a person who is under the age of sixteen.

Section 274 of the Criminal Procedure Code provides —

"No sentence of caning shall be executed by instalments and none of the following persons shall be punishable with caning:—

(a) females;

(b) males sentenced to death;

(c) males whom the court considers to be more than fifty years of age."

There appears therefore to be an apparent conflict between the provisions of section 3 of the Punishment for Vandalism Act 1966 and the provisions of section 55(3) of the Children and Young Persons Ordinance on the power of a court other than the High Court to impose a sentence of caning on a person under the age of sixteen but the answer in my opinion can be found by a consideration of section 274 of the Criminal Procedure Code (Cap. 132) which is a clear enactment that none of the three categories of persons specified therein shall be punishable with caning and is in my opinion a clear enactment of general application so that in respect of these three categories of persons no court whatsoever can sentence any of them to caning. Section 55(3) of the Children and Young Persons Ordinance is however not of the same general application in that persons under the age of sixteen can be sentenced to corporal punishment by the High Court.

Having regard to section 55(3) of the Children and Young Persons Ordinance (Cap. 128) and section 274 of the Criminal Procedure Code what then is the true construction of section 3 of the Punishment for Vandalism Act 1966? In approaching this problem I would adopt as correct the passage in *Craies* on Statute Law 6th edition at page 531 where it is stated: —

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' 'A hundred years ago,' said the court in *Lyons'* case, 'statutes were required to be perfectly precise, and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature.' Therefore, 'although the common distinction,' as Pollock C.B. said in *Nicholson* v. *Fields*, 'taken between penal Acts and remedial Acts, that the former are to be construed strictly and the others are to be construed liberally, is not a distinction, perhaps, that ought to be erased from the mind of a judge,' yet the distinction now means little more than 'that penal provisions, like all others, are to be fairly construed according to legislative intent as expressed in the enactment, the courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction, or equitable interpretation to exonerate parties plainly within their scope'."

The legislative intent is clear from the preamble which states that it is "An Act to provide for exemplary punishment for acts of vandalism". It is also, in my opinion, clear that the legislature by its express reference to section 274 of the Criminal Procedure Code intended to embrace all persons, except the three categories specified therein, within the latter part of section 3 i.e. the punishment of caning.

I am accordingly of the view that the sentence of caning imposed by the magistrate on the appellant was a valid sentence and the appeal is therefore dismissed and the sentence affirmed.

Appeal dismissed.

LIEW SHIN LAI v. MINISTER OF HOME AFFAIRS

[Misc. Cr. App. (Ong Hock Sim J.) March 26, 1969]

[Penang — Miscellaneous Criminal Application No. 3 of 1969]

Banishment — Citizen by operation of law — Deprivation of citizenship — Banishment order — Whether court can review — Whether Banishment Ordinance, 1959, s. 5 available to non-citizen.

Constitutional Law — Citizenship — Deprivation of — Citizen to be given every opportunity to be heard before deprivation order made — Malaysia Constitution, arts. 14 & 27.

The applicant sought to set aside the banishment order made against him on February 15, 1969, on the ground that under section 5(1) of the Banishment Ordinance, 1959, a banishment order could only be made in respect of any person not being a citizen of the Federation. The applicant was a citizen by operation of law. By reason of the order of deprivation made on June 3, 1968 and gazetted on June 20, 1968, the applicant ceased to be a citizen.

Held: the applicant could not avail himself of section 5 of the Banishment Ordinance.

MISCELLANEOUS CRIMINAL APPLICATION.

Albert Lee Him for the applicant.

Abdul Razak bin Dato Abu Samah (State Legal Adviser) for the respondent.

Ong Hock Sim J. (delivering oral judgment): This is an application by the applicant to set aside the order of banishment made against him on the 15th February, 1969 on the ground that he is a citizen by operation of law by reason of his birth in Penang on the 7th day of December, 1937. The application is made under section 10 of the Banishment Ordinance No. 11 of 1959.

There is no dispute his birth did, pursuant to article 14 of the Constitution, confer on him citizenship by operation of law. In reply, the Assistant Minister of Home Affairs filed an affidavit setting out that notice of intention to deprive the applicant of the citizenship was served on the applicant on 16th April, 1965 at his then last known place of residence namely, 128-L Sungei Buloh New Village, Selangor, and in that notice the applicant was required to give information in writing if he claimed to have the matter referred to a committee of inquiry appointed under article 27 of the Constitution. There is no evidence that any such notice in writing was given by the applicant but the applicant claims that he was summoned to court and he did attend on some four occasions. Clause (2) of article 27 provides that even though the applicant has not claimed to have his case referred to a committee of inquiry, the Federal Government may itself refer the case to the committee. Rule 38 of the Citizenship Rules 1964, seems to support the allegation made by the applicant that he was called to attend court on some four occasions, presumably to appear before the committee of inquiry and to be heard before it makes its report to the Government pursuant to such reference